

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL ACTION NO. 1:23-CV-00336-KDB-WCM**

**CLEATUS ELLERBY,**

**Plaintiff,**

**v.**

**COMMISSIONER OF SOCIAL  
SECURITY,**

**Defendant.**

**ORDER**

**THIS MATTER** is before the Court on Plaintiff's Appeal from the denial of Social Security Disability Benefits by the Commissioner (Doc. No. 8); Defendant Commissioner of Social Security's ("Commissioner") Response (Doc. No. 10); and the Memorandum and Recommendation ("M&R") of the Honorable Magistrate Judge W. Carleton Metcalf (Doc. No. 11), which recommends that the Commissioner's decision be vacated and that the case be remanded for further consideration. No party has filed an objection to the M&R, and the time for doing so has expired. Fed. R. Civ. P. 72(b)(2).

**I. BACKGROUND**

There has been no objection to the Magistrate Judge's statement of the factual and procedural background of this case. Therefore, the Court adopts the facts as set forth in the M&R. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985) (explaining the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge to which no objections have been raised).

**II. STANDARD OF REVIEW**

A district court may designate a magistrate judge to “submit to a judge of the court proposed findings of fact and recommendations for the disposition” of dispositive pretrial matters, including motions to dismiss. 28 U.S.C. § 636(b)(1). Any party may object to the magistrate judge’s proposed findings and recommendations, and the court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). However, “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” and need not give any explanation for adopting the M&R. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983). After reviewing the record, the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

### **III. DISCUSSION**

Having carefully reviewed the Magistrate Judge’s M&R, the relevant portions of the record and applicable legal authority, this Court is satisfied that there is no clear error as to the M&R, to which no objection was made. *Diamond*, 416 F.3d at 315. Accordingly, this Court finds that it should adopt the findings and recommendations set forth in the M&R as its own, the Commissioner’s decision should be vacated; and the case should be remanded for further consideration.

### **IV. ORDER**

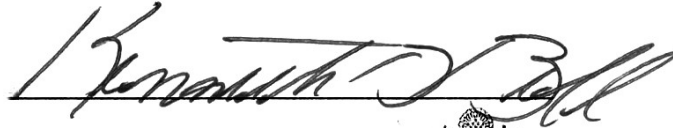
#### **NOW THEREFORE IT IS ORDERED THAT:**

1. The Magistrate Judge’s M&R (Doc. No. 11) is **ADOPTED**; and

2. The Commissioner's decision is **VACATED**, and the case is **REMANDED** for further administrative consideration.

**SO ORDERED ADJUDGED AND DECREED.**

Signed: February 6, 2025

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell  
United States District Judge

